

## Item SPR06-13 Response Form

**Title:** Managing Discovery of Electronically Stored Information (amend Cal. Rules of Court, rule 212)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ **Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 23, 2006
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,  
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-13

Title	Managing Discovery of Electronically Stored Information (amend Cal. Rules of Court, rule 212)
Summary	Rule 212 of the California Rules of Court would be amended to include the preservation and discovery of electronic data on the list of (1) matters on which parties must meet and confer in civil cases and (2) subjects to be considered at civil case management conferences.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p>Court management of discovery of electronically stored information ("e-discovery") has become an important issue for litigants and the courts in civil cases, particularly in larger and more complicated cases. Proper and effective management can simplify the process of e-discovery and reduce the costs of litigation. Several of the pending federal rules amendments directly address the management of e-discovery. California would benefit from the inclusion of similar provisions in its rules on civil case management.</p> <p>This proposal would amend rule 212 of the California Rules of Court, which concerns civil case management, to include provisions similar to the proposed new e-discovery provisions in the Federal Rules of Civil Procedure. Specifically, the amendments to rule 212 would add provisions on the management of e-discovery to subdivisions (e) and (f) of rule 212 similar to those proposed to be included in Federal Rules 26(f) and 16(b).</p> <p>Thus, when the parties meet and confer before a case management conference, they would be required to consider: (1) identifying and resolving any issues relating to preserving discoverable information, including electronically stored information; (2) identifying and resolving any issues relating to the discovery or voluntary disclosure<sup>1</sup> of electronically stored information, including the form or forms in</p>

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<sup>1</sup> The term "disclosure" is used in the pending amendments to Federal Rules of Civil Procedure 16 and 26. In those rules, the term refers to the required disclosures under Federal Rule of Civil Procedure 26(a). However, California law does not have equivalent mandatory disclosure requirements. In this state, parties may voluntarily disclose documents and information. So in the proposed amendments to rule 212 of the California Rules of Court, the term "voluntary disclosure" is used to clarify the type of disclosure that is being referred to.

which the information should be produced; and (3) identifying and resolving any issues relating to claims of privilege or protection of attorney work product, including—if the parties agree on a procedure to assert such claims after production—whether to ask the court to include their agreement in an order. (See proposed amended rule 212(f)(1)-(3).)

At the case management conference, the list of subjects to be considered would be expanded to include: (1) whether the case involves issues relating to the preservation of discoverable information, including electronically stored information and, if so, whether the case management order should include provisions concerning the preservation of such information; (2) whether the case management order should include provisions regarding the discovery or voluntary disclosure of electronically stored information, including the form or forms in which it should be produced; and (3) whether the order should include any agreements the parties have reached with respect to the assertion, preservation, or waiver of any privileges or work product protection for any materials produced by any party. (See proposed amended rule 212(e)(8) and (11)–(12).)

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Attachment

## Proposal

Rule 212 of the California Rules of Court would be amended, effective January 1, 2007, to read:

**Rule 212. Case management conference; meet-and-confer requirement; and case management order**

**(a)–(d) \* \* \***

**(e) [Subjects to be considered at the case management conference]** In any case management conference or review under this rule, the parties must address, if applicable, and the court may take appropriate action with respect to, the following:

**(1)–(7) \* \* \***

(8) Whether the case involves any issues relating to the preservation of discoverable information, including electronically stored information, and, if so, whether the case management order should include provisions concerning preservation of such information;

~~(8)~~(9) Whether discovery has been completed and, if not, the date by which it will be completed;

~~(9)~~(10) What discovery issues are anticipated;

(11) Whether the case management order should include provisions regarding the discovery or voluntary disclosure of electronically stored information, including the form or forms in which it should be produced;

(12) Whether the order should include any agreements the parties have reached with respect to the assertion, preservation, or waiver of any privileges or work product protection for any materials produced by any party;

~~(10)~~(13) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under section 598 of the Code of Civil Procedure;

~~(11)~~(14) Whether there are any cross-complaints that are not ready to be set for trial and, if so, whether they should be served;

- ~~(12)~~(15) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
- ~~(13)~~(16) Whether a jury trial is demanded, and, if so, the identify of each party requesting a jury trial;
- ~~(14)~~(17) If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;
- ~~(15)~~(18) The estimated length of trial;
- ~~(16)~~(19) The nature of the injuries;
- ~~(17)~~(20) The amount of damages, including any special or punitive damages;
- ~~(18)~~(21) Any additional relief sought;
- ~~(19)~~(22) Whether there are any insurance coverage issues that may affect the resolution of the case; and
- ~~(20)~~(23) Any other matters that should be considered by the court or addressed in its case management order.
- (f) **[Meet-and-confer requirement]** Unless the court orders another time period, no later than 30 calendar days before the date set for the case management conference, the parties must meet and confer, in person or by telephone, to consider each of the issues identified in (e) and, in addition, to consider the following:
- (1) Identifying and resolving any issues relating to preserving discoverable information, including electronically stored information;
  - (2) Identifying and resolving any issues relating to the discovery or voluntary disclosure of electronically stored information, including the form or forms in which the information should be produced;
  - (3) Identifying and resolving any issues relating to claims of privilege or protection of attorney work product, including—if the parties agree on a procedure to assert such claims after production—whether to ask the court to include their agreement in an order;
- ~~(4)~~(4) Resolving any discovery disputes and setting a discovery schedule;

- 1        ~~(2)~~(5) Identifying and, if possible, informally resolving any anticipated  
2               motions;  
3  
4        ~~(3)~~(6) Identifying the facts and issues in the case that are uncontested and  
5               may be the subject of stipulation;  
6  
7        ~~(4)~~(7) Identifying the facts and issues in the case that are in dispute;  
8  
9        ~~(5)~~(8) Determining whether the issues in the case can be narrowed by  
10               eliminating any claims or defenses by means of a motion or otherwise;  
11  
12        ~~(6)~~(9) Possible settlement;  
13  
14        ~~(7)~~(10) Identifying the dates on which all parties and their attorneys are  
15               available or not available for trial, including the reasons for  
16               unavailability; and  
17  
18        ~~(8)~~(11) Other relevant matters.

19  
20        **(g)–(k) \* \* \***